IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO.Z-705010-D1 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to:Alexander MILES Z-705010-D1

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

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Alexander MILES

This review has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.35.

By order dated 20 October 1969, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board SS DOCTOR LYKES under authority of the document above captioned, Appellant:

(1) on 18 May 1969, at sea, failed to perform his duties;

(2) on 2 and 3 July 1969, at Manila, P.R., failed to perform his assigned duties; and

(3) on 6 July 1969, at Hong Kong, failed to perform duties by reason of intoxication.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of DOCTOR LYKES.

There was no defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months.

FINDINGS OF FACT

Because of the disposition to be made of this case, no findings are now made.

OPINION

I

This case is being reviewed because of a novel question as to representation by counsel.

The seaman involved in this case was properly served with charges on 20 August 1969. The notice informed him of the time and place of hearing. On 28 August 1969, the party did not appear pursuant to notice. The usual course, in such cases, is for the hearing to proceed in absentia under 46 CFR 137.20-25.

In this case, an attorney from a New Orleans law firm presented himself, purporting to represent the party. The Examiner refused to accept the appearance because he was not satisfied that there was an adequate showing that the attorney represented the party. There was in fact no such showing, and the attorney admitted that he did not know where the party was. However, the Examiner apparently recognized the attorney as an attorney because he adjourned the case to 29 August 1969 so that the party might appear in person or adequate proof of representation could be produced by the purported representative.

With no explanation in the record for any failure to convene on 29 August, the next session of the hearing was held on 3 September 1969. No authorization to represent the party was offered. The Examiner again refused to accept the appearance and proceeded under the in absentia regulation to findings as set out above.

If this were all, there would be no difficulty, although review would have been appropriate to approve the Examiner's action in refusing to accept the appearance of an attorney who could not show that he was more than a volunteer and who could not account for his claimed client.

There is more to the matter than this, however.

II

The record before me indicates that the Examiner's decision was served on 2 December 1969, that the party applied for a duplicate document on the same date, that an "appeal" was filed on 8 December 1969, that the Examiner requested four copies of a transcript of the proceedings on 16 December 1969, noting that a temporary document was issued to the party by the Examiner on 18 [sic] December 1969, that a transcript of proceedings was furnished to "Appellant" on 4 February 1970, and that a "brief" for "Appellant" was filed on 6 March 1970.

Normally these steps are routinely taken and the dates routinely recorded. In the instant case the routine takes on crucial significance.

The "notice of appeal" was filed by still another member of the law firm which had initially been denied standing by the Examiner, and on the "brief" filed yet a fourth member of that firm appears of counsel.

For an examiner to issue a temporary document, as was apparently done here, it is necessary that a notice of appeal have been filed. For a transcript to be provided to an attorney it is necessary that he be authorized to prosecute the appeal. For all of this, there is no more in this record to support a view that the law firm was authorized to act for the party on appeal than there was to act at the hearing.

Although these routine matters are normally not of significance, as mentioned above, it becomes important here to know:

(1) on whom and by whom was the Examiner's decision served;

(2) on whose notice of appeal did the Examiner act in issuing a temporary document to Appellant;

(3) whether a transcript of the proceedings was furnished to the attorneys involved, and by whom;

(4) whether the Examiner was somehow satisfied that the law firm represented the party on appeal if not at hearing, and, if so, what the supporting evidence was; and

(5) if the Examiner was so satisfied, why the matters are not of record.

At this stage of proceedings, it appears that only the Examiner can provide the necessary answers so that I can determine whether a proper appeal has been filed, since the Examiner issued the temporary document and called for the transcript of proceedings.

III

It would appear that if the party and his counsel were inconsistently dealt with, in that representation held not established at hearing was accepted for appeal purposes on no better showing of authority, someone may have been misled by Coast Guard actions, and some radical correction may be necessary. On

the other hand, if there was some notice by the Examiner that representation by counsel was found acceptable for appellate purposes even though not acceptable for the hearing itself, so that an "appeal" could be considered, this should be a matter of record.

CONCLUSION

An affidavit of the Examiner is required to resolve the difficulties expressed above. If the affidavit makes it apparent that no proper appeal was filed, no further appellate action will be required in this matter. Administrative action will be required, however, since the party now holds a valid temporary document which will expire when the Examiner's order is affirmed as final action because not properly appealed.

If the affidavit indicates a proper appeal was filed consideration of the appeal on the merits and a decision on appeal will be necessary.

Copies of this decision on sua sponte review will be furnished both to the seaman concerned and his purported counsel. The Examiner will be required to serve on both the purported counsel and the party a copy of his affidavit pursuant to the order in this case. Both the seaman and purported counsel will be permitted fifteen days in which to file comment on the Examiner's affidavit.

ORDER

The Examiner is directed to prepare and distribute an affidavit appropriate to answer the questions raised in the OPINION above.

The findings and order of the Examiner dated at New Orleans, La., on 20 October 1969 will not be considered until the import of the affidavit is assessed.

C.R. BENDER

Signed at Washington, D.C., this 2nd day of August 1971.